Decision for dispute CAC-UDRP-101968

Case number	CAC-UDRP-101968
Time of filing	2018-04-19 09:45:00
Domain names	servierstore.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	LES LABORATOIRES SERVIER

Complainant representative

Organization	IP TWINS

Respondent

Name	Xing Zhou

OTHER LEGAL PROCEEDINGS

To the best of her knowledge, the Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the trademark SERVIER, registered in many countries worldwide, including the following:

- SERVIER (word), EUTM registration No. 4279171 filed on February 7, 2005 and registered on October 15, 2007, claiming protection for goods in classes 5 and services in classes 41, 42, and 44;

- SERVIER (word), international registration No. 814214 of August 8, 2003, claiming protection for goods in classes 5 and services in classes 41, 42, and 44;

- SERVIER (device), international registration No. 571972 of May 29, 1991, claiming protection for goods in classes 1, 3, and 5;

- SERVIER (device), international registration No. 549079 of January 19, 1990, claiming protection for goods in classes 1, 3, 5;10, 16 and services in classes 35, 41 and 42.

The Complainant is also the owner of numerous domain names incorporating the SERVIER trademark, among which <servier.com>, <servier.fr>, <laboratories-servier.com>, <servier.cz>, and others.

FACTUAL BACKGROUND

The Complainant is the French company Les Laboratoires Servier, operating in the pharmaceutical field. The Complainant was founded in 1954 by Dr. Jacques Servier who took over a small pharmaceutical company and over the years transformed it into the largest independent French pharmaceutical group, bearing a local presence in 148 countries worldwide.

The Complainant operates through the trademark SERVIER; its main website is at the addresses www.servier.com and www.servier.fr.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I. CONFUSING SIMILARITY

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's registered trademark SERVIER, which bears distinctive character and is entirely reproduced in the disputed domain name. The addition of the term "store" does not exclude the confusing similarity of the disputed domain name with the Complainant's trademark, since this term lacks distinctive character.

The Panel finds that the Complainant's arguments are correct. The distinctive component of the disputed domain name <servierstore.com> lies in the term "servier", while the term "store" merely refers to a place (including an on-line space), where goods can be purchased. In the instant case, the addition of the term "store" to the Complainant's trademark SERVIER induces Internet users searching for the Complainant's goods and activities to believe that the disputed domain name belongs to, or is associated with, the Complainant, and that the corresponding website offers for sale genuine products.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark SERVIER.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

While the overall burden of proof under the UDRP proceedings rests on the complainant, it is generally recognized that in order to prove the respondent's lack of rights or legitimate interest in the domain name it is sufficient for the Complainant to make out a prima facie case in order to shift the burden of proof to the respondent. This is so because proving a third party's negative fact, such as the respondent's lack of rights or legitimate interest, would otherwise result in an almost impossible task for the complainant.

In the instant case, the Complainant maintains that the Respondent has no business relationship with the Respondent, and is therefore not authorized to use the distinctive trademark SERVIER within the disputed domain name. Moreover, a trademark search conducted on the available databases failed to reveal any SERVIER trademark other than those belonging to the Complainant or its subsidiaries. The Complainant further notes that the trademark SERVIER bears distinctive character and that the Respondent cannot claim that "Servier" is a descriptive term, which the Respondent must use in the course of its business.

Finally, an Internet search conducted on Google® for the keywords "Servier" and "Xing Zhou Servier store" did not reveal any bona fide activity of the Respondent in relation to the disputed domain name. Rather, the disputed domain name redirects to a parking page containing pay-per-click ("PPC") links.

In the Panel's opinion, the aforesaid circumstances are sufficient to affirm that the Complainant made out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Nothing in the case file shows that the Respondent is known by the disputed domain name, or that he is entitled to reproduce the Complainant's trademark within the disputed domain name.
The Complainant has shown that the landing page to which the disputed domain name resolves displays sponsoring links targeting the Complainant's trademark, which are intended to generate revenues. This use does not amount to a legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraph 4(b)(iii) of the Policy as the Respondent is clearly trying to exploit the Complainant's goodwill for profit. (See Ustream.TV, Inc. v. Vertical Axis, Inc, WIPO Case No. D2008-0598, and Avid Dating Life Inc. v. Calico Draconia, WIPO Case No. D2015-1324).

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Complainant asserts that it is highly unlikely that the Respondent was not aware of the Complainant's trademark at the time of the registration of the disputed domain name. Rather, the Respondent's choice of the disputed domain name must not have been accidental and has probably been influenced by the reputation of the Complainant's trademark. A Google® search on the keyword "servier" shows that all top-ranked results are connected to the Complainant. The addition of the term "store" to the name "Servier" is likely to mislead Internet users on the origin of the disputed domain name.

The Complainant also provided the results of a reverse Whois search made on the Respondent's e-mail address, which revealed that this e-mail address is connected with many other domain names, several of which contain third parties' well-known trademarks.

In view of the above, the Complainant concludes that the disputed domain name was registered in bad faith.

The Panel shares the Complainant's view. The Complainant and its trademark SERVIER seem to enjoy reputation in their field. By adding the term "store" to the trademark SERVIER in the disputed domain name, the Respondent has shown an intention to mislead Internet users seeking for the Complainant's goods.

In consideration of this, and of the fact that the Respondent appears to be linked to other domain names containing well-known third parties' trademarks, the Panel concludes that it is more likely than not that at the time of the registration of the disputed domain name the Respondent was well aware of the Complainant's trademark.

Prior panels deciding under the Policy have held that actual and constructive knowledge of a complainant's rights at the time

of registration of a domain name constitutes strong evidence of bad faith. See eBay Inc. v. Sunho Hong, WIPO Case No. D2000-1633 ("actual or constructive knowledge of the Complainant's rights in the Trademarks is a factor supporting bad faith.") and. E. & J. Gallo Winery v. Oak Investment Group WIPO Case No. D2000-1213 (finding bad faith where the respondent "knew or should have known" of the complainant's trademark).

As far as use in bad faith is concerned, the disputed domain name leads to a parking page containing commercial links referring to the Complainant's activity. One of these links refers to the Complainant itself and is named "Servier". The Panel notes that the parking page contains a notice stating as follows: "The Sponsored Listings displayed above are served automatically by a third party. Neither the service provider nor the domain owner maintain any relationship with the advertisers. In case of trademark issues please contact the domain owner directly (contact information can be found in whois)."
The Panel notes that the fact that these commercial links have not been generated by the Respondent does not prevent a finding of bad faith. The Respondent is responsible for the contents of the webpage associated with the disputed domain name, even if the links appearing on the relevant webpage have been created automatically. Paragraph 3.5 of the WIPO Overview 3.0 states that: "with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith."

Before filing its UDRP Complaint, the Complainant sent a cease and desist letter to the Respondent, informing of the Complainant's earlier trademark rights and asking for the voluntary assignment of the disputed domain name. The Respondent never replied to the Complainant's letter, nor to a subsequent reminder. As such, the Respondent failed to put in place a positive action to remedy to its illegitimate registration of the disputed domain name.

The fact that the e-mail address associated with the Respondent appears to be used also in relation to other domain names corresponding to third parties' well-known trademarks indicates that the Respondent has engaged in a pattern of such conduct.

In view of the foregoing, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith, in order to intentionally attempt to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent web site.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **SERVIERSTORE.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2018-06-05

Publish the Decision